

1 BILL NO. S-82-07- 23

2 SPECIAL ORDINANCE NO. S-132-82

3 AN ORDINANCE authorizing the execution
4 of Agreements and understandings between
5 the City of Fort Wayne and the United
6 States Army Corps of Engineers.

7 WHEREAS, due to the Flood of 1982 it has been
8 necessary for the City of Fort Wayne to engage the assistance
9 of the United States Army Corps of Engineers; and

10 WHEREAS, to complete rehabilitation, it is necessary
11 for the City of Fort Wayne to enter into certain Agreements
12 and understandings with the United States Army Corps of
13 Engineers.

14 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
15 OF THE CITY OF FORT WAYNE, INDIANA:

16 SECTION 1. The City of Fort Wayne is hereby given
17 authority to enter into a certain Agreement with the United
18 States Army Corps of Engineers for rehabilitation of the
19 flood control dike. A copy of said Agreement is attached
20 hereto, made a part hereof, as if fully set out herein, and
21 further, two copies of said Agreement are on file with the
22 Office of the City Clerk and made available for public inspection,
23 according to law.

24 SECTION 2. That this Ordinance shall be in full force
25 and effect from and after its passage, and any and all necessary
26 approval by the Mayor.

27
28 APPROVED AS TO FORM
29 AND LEGALITY

30 
31 Bruce O. Boxberger, City Attorney
32


Council member

Read the first time in full and on motion by GiaQuinta, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: 7-27-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by GiaQuinta, seconded by Talarico, and duly adopted, placed on its passage. PASSED (~~lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	<u>8</u>	<u>0</u>	_____	_____	_____
BRADBURY	<u>✓</u>	_____	_____	_____	_____
BURNS	<u>✓</u>	_____	_____	_____	_____
EISBART	<u>✓</u>	_____	_____	_____	_____
GiaQUINTA	<u>✓</u>	_____	_____	_____	_____
WYOMING	_____	_____	_____	_____	_____
SCHMIDT	<u>✓</u>	_____	_____	_____	_____
SCHOMBURG	<u>✓</u>	_____	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____	_____

DATE: 8-10-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. 1-132-82
on the 10th day of August, 1982

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of August, 1982, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 13th day of August, 1982, at the hour of 10 o'clock A.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-07-23

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON Finance TO WHOM WAS REFERRED AN
ORDINANCE authorizing the execution of Agreements and
understandings between the City of Fort Wayne and the United States
Army Corps of Engineers

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

MARK E. GiaQUINTA - CHAIRMAN

PAUL M. BURNS - VICE CHAIRMAN

JAMES S. STIER

JOHN NUCKOLS

DONALD J. SCHMIDT

8-10-82
DATE 8-10-82 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

NCEED-T

Honorable Win Moses, Jr.
Mayor, City of Fort Wayne
Fort Wayne, IN 46802

Dear Mayor Moses:

This letter concerns inclusion of certain additional features in the Federal construction contract for rehabilitation of the City's flood control dike system as requested in your letter of 30 June 1982. These features include modification to the Pemberton Street Dike that would increase its cross section area and also includes a bentonite cut-off wall as indicated on the attached sketch. Costs for the requested features below the top elevation of the existing levee (elevation 755 feet), preservative work, are cost shared with a maximum Federal contribution of \$50,000. Costs for all work above that elevation, betterments, cannot be cost shared and are at 100 percent City cost.

The preliminary estimate of cost to the City of the above features is \$110,000. This estimate includes 10% for construction contingencies, \$4,600 for engineering and design and 7% Government supervision and administration costs. This amount also recognizes the \$50,000 Federal share of the requested items. The City of Fort Wayne must make a cash contribution, presently estimated at \$110,000, prior to our advertisement of the work for construction bids. This amount will be subject to an adjustment prior to bid opening as described hereinafter. The preliminary estimate of City costs is as follows:

a. Preservative costs - the cost of all work below the top of the existing levee (el. 755 feet) - cost shared.

Dike Fill	6,500 c.y. @ \$2.30	=	\$ 15,000
Slurry	33,000 sq. ft. @ \$3.00	=	<u>99,000</u>
			\$114,000
	10% contingencies	=	<u>12,000</u>
Construction Cost - Subtotal		=	\$126,000

b. Betterment costs - The cost of all work above the top of the existing levee (755 feet) - 100% City costs.

Dike Fill	2,300 c.y. @ \$2.30	=	\$ ^{5,320} 53,000
Clay Cap	170 c.y. @ \$10	=	<u>1,700</u>
Slurry Trench	3,300 sq. ft. @ \$3.00	=	<u>9,900</u>
			\$ 16,900
	10% contingencies	=	<u>2,000</u>
Construction Cost - Subtotal		=	\$ 18,900
Total Construction Cost -		=	<u>\$144,900</u>
City Features			

c. Total Cost - City Features, cost sharing

Pemberton Levee	Below 755 ft. (eligible for Fed. cost sharing)	Above 755 ft. (not eligible for Fed. cost sharing)	Total
Contract Cost	\$126,000	+	\$18,900
E&D Cost	4,000		600
S&A Cost	<u>9,000</u>		<u>1,500</u>
Total Pemberton Cost	\$139,000		\$21,000
Maximum Federal Share	<u>50,000</u>		<u>0</u>
Total City Cost	\$ 89,000	+	\$21,000
			\$110,000

All contract modifications and contractor claims related to the construction of City features will be at City cost.

In order to maximize utilization of your available funds and at the same time assure award of a construction contract, the project will be advertised as a basic bid package with a bid additive. This basic bid package will include the proof rolling and attendant fill and compaction, plus erosion control on the St. Marys River in Area 15. These are Federal items of cost. The City's requested features will be advertised as a separate bid additive.

The amount of City funds available prior to advertising will be the key factor in determining the successful low bidder and must be announced at the bid opening prior to the opening of bids. The basic bid plus the additive shall be evaluated first for purposes of award. If the City's funds are sufficient, the low bidder for the basic bid plus the additive will be designated as the successful low bidder. If City funds are insufficient, award will be made to the lowest responsible, responsive bidder on the basic bid. If additional funds are made available within 5 days after the bid opening, the additive may be awarded if it does not result in a change in the successful low bidder, or, in other words, the low bidder for the basic bid. In no case will the work associated with the additive be added to the contract via modification if such action would be in conflict with the above stated award procedure.

In addition, a procedure is herewith established to protect the Government and the City against the possibility of the unbalancing of bids. This is important since the Government's basic responsibilities are contained in the basic bid and the City's in the additive. A ratio to establish the relative

costs of the basic bid and additive bid will set via the detailed Government Estimate which is normally used to judge the bids received at the bid opening. In the instant situation, the estimate will also serve as a basis for charging proportionate construction costs against the City's funds and establishing sufficiency of available City funds at the bid opening. In addition, this estimate will be used as a basis to judge any upward adjustment required in the City's cash contribution prior to bid opening. The computed percentages will be presented to the City 3 days prior to the bid opening for review. If the City does not show good cause for changes in the percentages before the bid opening, the percentages will be used in proportioning the apparent successful low bid for the basic bid and the additive and for determining the amount of City funds available for award of the additive bid item. For example, current estimates of the basic bid and the additive bid items are as follows:

a. Basic Bid (proofrolling, filling

and erosion control) - All Federal Cost	\$ 89,200
Contingencies	<u>17,800</u>
Subtotal	\$107,000

b. Additive Bid (Pemberton preservative

and betterment costs) - Cost Shared	\$130,900
Contingencies	<u>14,000</u>
Subtotal	<u>144,900</u>
Total	\$251,900

Basic Bid Item - 42.5%

Additive Bid Item - 57.5%

Of course the \$50,000 Federal cost contribution would be subtracted from the Additive Bid to establish the amount of City funds available as follows:

Additive Bid	\$130,900
Contingencies	(+) 14,000
E&D	(+) 4,600
S&A	(+) 10,500
Federal Contribution	(-) <u>50,000</u>
Total City Funds Required	\$110,000

It is strongly recommended at this time that you budget for an additional 25% of this amount since this is allowed by our regulations for making awards at bid openings and will provide an added contingency to assure award of the work you desire.

If at any time during construction, unforeseen contingencies cause the City's cash contribution to be depleted, the City will forthwith contribute sufficient additional funds in an amount estimated by the Government as necessary to complete the project. Should such failure to pay result in issuance of an exhaustion of funds notice or in partial or complete termination of work, all related costs shall be paid by the City.

Final costs will be adjusted, upon completion of the project, to reflect the actual costs of the non-Federal features. City features will be included as bid items on the government construction contract and unit prices will be

established by the successful bidder. Actual construction quantities, bid prices, adjusted for unbalancing, and any required adjustment for contract modifications will determine the total construction cost to the City. A 7% charge for Government overhead, supervision and inspection plus engineering and design cost will be added to obtain the final City costs. The City will be required to pay any amount in excess of the initial contribution. However, if actual costs are less than the initial contribution, the Government will, upon completion of the project, return any overpayment.

Acceptance of the above should be indicated by signature and certification as provided below and return of the original to this office .

Sincerely,

1 Incl
As stated

ROBERT V. VERMILLION
Colonel, Corps of Engineers
District Engineer

This agreement is hereby accepted on the 19th day of July 1982.

WITNESSES:

CITY OF FORT WAYNE

David J. Kint

BY: Win Moses Jr.

218 ALVERNO

MAYOR OF FORT WAYNE

(ADDRESS)

FORT WAYNE, INDIANA

Mark Angell
2414 Dickey

(ADDRESS)

Charles W. Westerman
I, _____ certify that I am the City Clerk of the City of Fort Wayne,
that Win Moses, Jr. who signed this agreement on behalf of the City of
Fort Wayne was then mayor of said City and said agreement was duly signed for
and on behalf of such City by authority of it's governing body and is within
the scope of its corporate powers.

IN WITNESS WHEREOF, I have here unto affixed my hand and the seal of the said
City this 19th day of July, 1982.

(CORPORATE SEAL)

Charles W. Western

(CITY CLERK)

I hereby certify that to the best of my knowledge and belief based upon observation and inquiry, _____ who signed this agreement for the City of Fort Wayne has the authority to execute same and is the individual who signed similar contracts or agreements on behalf of the City of Fort Wayne with the public generally.

ROBERT V. VERMILLION

Colonel, Corps of Engineers

District Engineer

ASSURANCE FORM AND PERMISSION TO ENTER UPON LAND
EMERGENCY FLOOD CONTROL
PUBLIC LAW 99, 84th CONGRESS
REPAIR FLOOD DAMAGES TO THE LEVEES ON THE
ST. MARYS, ST. JOSEPH AND MAUMEE RIVERS
FORT WAYNE, INDIANA

The City of Fort Wayne, of the County of Allen, State of Indiana, by its duly qualified and authorized officials whose signatures are affixed hereto, does hereby request the Federal Government under the authorization contained in Section 5 of the Flood Control Act approved August 18, 1941, as amended (33 U.S.C. 701n), to repair, restore, setback and/or strengthen the levees and other flood control works of said City, which have been threatened or destroyed by the recent floods, including strengthening, raising, extending or other modifications to the levees as may be necessary.

The City by its duly authorized officials whose signatures are affixed hereto, in consideration of the benefits which are expected to accrue to said City by reason of the participation of the United States in said emergency flood control work, does hereby agree and pledge that it will truly and faithfully perform the following conditions, to wit:

1. Provide without cost to the United States all lands, easements, and rights-of-way, including borrow and spoil disposal areas and access roads, necessary for the authorized work.
2. Hold and save the United States free from all claims for damages attributable to the construction works, except for damages due to the fault or negligence of the United States or its contractors.
3. Maintain and operate, in a manner satisfactory to the Chief of Engineers, all flood protective works after completion. It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of undersigned owners.
4. Provide, as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms, or businesses due to the acquisition of rights-of-way for the emergency levee rehabilitation construction work.
5. Finish, dress and place sod on completed work or seed with a good sod-producing seed mixture after completion of the work and prior to the end of the next seeding season.
6. Remove and maintain slopes clear of all existing and emergent trees and shrubbery on the landward slopes of levees involved in the 1982 rehabilitation, without cost to the United States, including the portions of those individual levees that extend to the nearest high ground reaches in said 1982 rehabilitation. Trees and shrubbery removal shall be completed by the City of Fort Wayne prior to an award of a Federal construction and/or equipment contract for levees repair.

7. Contribute in cash all costs in excess of the Federal first cost limitation of \$50,000 for rehabilitation of the Pemberton Street Levee, except for proof rolling and repairing the boil out at Pemberton dike, such contribution presently estimated at \$110,000, to be paid in a lump sum prior to initiation of construction, subject to final adjustment after actual costs have been determined.

The said City, by its aforesaid duly qualified and authorized officials, as part of the aforesaid consideration, does hereby release and forever discharge the United States of America, its officers, employees, agents and assigns, in the prosecution of the proposed emergency flood control work herein contemplated, from all claims, demands, actions and causes of action whatsoever which may arise by reason of, or in any manner have grown out of or alleged to have grown out of, the construction of the said flood control work as herein contemplated.

PERMISSION is hereby granted to the United States of America, its officers, employees, agents and assigns, and the Government contractors, their officers, employees agents and assigns, to enter upon the lands and rights-of-way of said City shown colored in red and blue on the attached drawing, hereto and made a part hereof, for the purpose of performing the emergency flood control work hereinabove described.

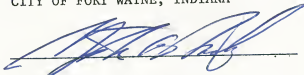
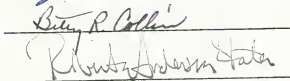
It is hereby certified that the undersigned officials have the legal authority to execute the above agreement; that the assistance herein requested is beyond the ability of local authorities; and that every possible effort shall continue to be made at the local level to accomplish effective protection from flooding.

IN WITNESS WHEREOF, we, the undersigned officials of said City, have hereunto subscribed our names this 19th day of July, A.D., 1982.

CITY OF FORT WAYNE, INDIANA

(SEAL)




Betty R. Collins

Robert Anderson

ACCEPTANCE OF ASSURANCES

The foregoing Assurances of the City of Fort Wayne, Indiana are hereby accepted for and on behalf of the United States of America.

DATE: _____

Robert V. Vermillion
Colonel, Corps of Engineers
District Engineer
Contracting Officer

ATTORNEY'S CERTIFICATE

1. Approved as to availability of right-of-way and as to legal authority for execution of this Assurance Form by City of Fort Wayne, Indiana.

2. Concerning Public Law 91-646, the following statement is made:

☐

The subject emergency work is being performed entirely within lands already owned or controlled by the

_____ and no additional acquisition of lands or easements was necessary. Therefore, no payments under Public Law 91-646 were required.

☐

Additional lands and/or easements were obtained for the subject work. However, said lands were unimproved, and no dislocations or conveyancing costs were involved.

☐

Additional lands and/or easements were obtained for the subject work. Although no dislocations were involved, reimbursements were made by the _____ for the following conveyancing costs incurred under Section 303 of Public Law 91-646:

Owner

Amount

Payment For:

☐

Persons and/or property were dislocated from lands acquired for the subject work. Such dislocations, and reimbursements therefor by the _____ are listed below:

Owner

Amount

Payment For:

DATE: _____

Attorney For the City of
Fort Wayne, Indiana